

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANKRUPTCY TRUST OF GERARD SILLAM, and
GERARD SILLAM,

Plaintiffs,

v.

REFCO GROUP, LLC, REFCO OVERSEAS LTD.
PHILLIP BENNETT, REFCO GROUP HOLDINGS
INC., LIBERTY CORNER CAPITAL, NEW YORK
STOCK EXCHANGE INC., GRANT THORNTON
LLP, GRANT THORNTON UK LLP, THOMAS H.
LEE PARTNERS LP, THOMAS H. LEE PARTNERS
FUND V, THOMAS H. LEE, SCOTT A. SCHOEN,
DAVID V. HARKINS, GERALD M. SHERER, LEO
R. BREITMAN, SCOTT JAECKEL, NATHAN
GANTCHER, RONALD O' KELLEY, HALIM
SAAD, DENNIS A. KLEJNA, MARK SALDE,
JULIAN COURTNEY, RICHARD REINERT,
DAVID CAMPELL, CREDIT SUISSE FIRST
BOSTON LLC, GOLDMAN SACHS & CO., BANK
OF AMERICA SECURITIES LLC, MERRILL
LYNCH PIERCE FENNER & SMITH INC.,
DEUTSCHE BANK SECURITIES INC., JP
MORGAN SECURITIES INC., SANDLER O'NEIL
PARTNERS LP, HSBC SECURITIES (USA) INC.,
WILLIAM BLAIR & COMPANY LLC, HARRIS
NESBITT CORP., CMG INSTITUTIONAL
TRADING LLC, SAMUEL A. RAMIREZ &
COMPANY, MURIEL SIEBERT & CO. INC., THE
WILLIAMS CAPITAL GLP, and UTENDAHL
CAPITAL PARTNERS,

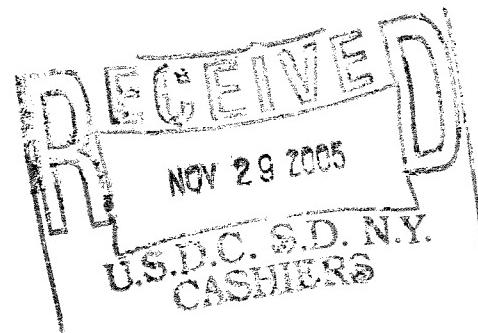
Defendants.

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, on this date, Defendants Credit Suisse First

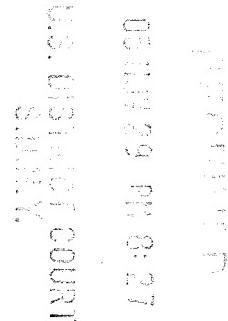
Boston LLC, Goldman, Sachs & Co., Banc of America Securities, LLC, Merrill Lynch, Pierce,



05 CV 10072

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §1452

Civil Action No.:



Fenner & Smith Inc., Deutsche Bank Securities, Inc., J.P. Morgan Securities, Inc., Sandler O'Neill & Partners, L.P., HSBC Securities (USA) Inc., William Blair & Company, L.L.C., Harris Nesbitt Corp., Samuel A. Ramirez & Company, Inc., Muriel Siebert & Co., Inc., The Williams Capital Group, L.P., and Utendahl Capital Group, L.P. (collectively, the "Underwriter Defendants"), by their undersigned counsel, file this Notice of Removal pursuant to 28 U.S.C. § 1452 removing this matter from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1334 *et seq.*

In support of this Notice of Removal, the Underwriter Defendants state as follows:

The Complaint

1. On or about November 4, 2005, Plaintiffs, the Bankruptcy Trust of Gerard Sillam and Gerard Sillam (collectively, "Plaintiffs" or "Sillam"), commenced a civil action by filing a summons and complaint in the Supreme Court of the State of New York, County of New York ("Supreme Court"), captioned *Bankruptcy Trust of Gerard Sillam and Gerard Sillam v. Refco Group LLC, et al.*, Index No. 05-603931 (the "Complaint"). Sillam seeks \$600 million dollars in compensatory damages, \$800 million dollars in restitution, and attorneys fees and costs. The Complaint asserts four causes of action: Fraud (Count One), Fraudulent Misrepresentation (Count Two), Tortious Interference with Contract (Count Three), and Unjust Enrichment (Count Four).

2. A copy of the summons and the Complaint is annexed hereto as Exhibit A. No other pleadings, process or orders have been served upon the Underwriter Defendants in the state court action. On November 25, 2005, Plaintiffs filed a First Amended Petition in the Supreme Court. The First Amended Petition has not been served on the Underwriter Defendants.

Grounds For Removal

3. Under 28 U.S.C. § 1452(a), “[a] party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under § 1334 of this title.” Under 28 U.S.C. § 1334(b), this Court has jurisdiction to hear all civil proceedings that are “related to cases under title 11.”

4. A claim in a civil action is “related to” a bankruptcy proceeding if it “could conceivably have an effect on the estate being administered in bankruptcy.” In re Cuyahoga Equipment Corporation, 980 F.2d 110, 114 (2d Cir. 1992).

5. Refco Inc. (“Refco”), and certain of its subsidiaries and affiliates, are currently in Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Case No. 05-60006 (RDD)) (“the Bankruptcy Proceedings”). Because Plaintiffs’ claim against the Underwriter Defendants is “related to” the Bankruptcy Proceedings, removal of this action is proper under 28 U.S.C. § 1452(a).

6. Plaintiffs’ claim against the Underwriter Defendants satisfies the applicable standard and is related to the Bankruptcy Proceedings in several ways: the Underwriter Defendants (a) have contractual rights to indemnification and contribution from Refco pursuant to an executed underwriting agreement between the Underwriter Defendants and Refco; (b) may be statutorily entitled to contribution from Refco (among others) under 15 U.S.C. § 77k(f)(1); and (c) may be entitled to indemnification and/or contribution from Refco (among others) under common law theories of joint and several liability.

7. In addition, on Monday, November 28, 2005, Plaintiff Bankruptcy Trust of Gerard Sillam filed an Emergency Motion in the Bankruptcy Proceedings seeking, *inter alia*,

“affirmation and conforming” of the Bankruptcy Court’s November 14, 2005 order approving the sale of the capital stock and operations of Refco LLC. (*See Exhibit B hereto.*) Specifically, Plaintiff’s motion sought clarification with respect to the effect *vel non* of the Court’s order on Refco Overseas Ltd., a defendant in this action.

8. In light of the relationship between Refco’s bankruptcy proceeding and Plaintiffs’ claims against the Underwriter Defendants, removal of this action is proper under Section 1452(a). *See In re WorldCom, Inc. Sec. Litig.*, 293 B.R. 308, 318 (S.D.N.Y. 2003), aff’d, California Public Employees’ Ret. Sys. v. WorldCom, Inc. (“Calpers”), 368 F.3d 86 (2d Cir. 2004).

Generally

9. The following Underwriter Defendants have been served with a summons and complaint in this action: Credit Suisse First Boston LLC, on or about November 9, 2005, Goldman, Sachs & Co. on or about November 9, 2005, Merrill Lynch, Pierce, Fenner & Smith Inc. on or about November 9, 2005, Deutsche Bank Securities, Inc. on or about November 9, 2005, HSBC Securities (USA) Inc. on or about November 9, 2005, J.P. Morgan Securities, Inc. on or about November 9, 2005, Harris Nesbitt Corp. on or about November 9, 2005, Utendahl Capital Group, L.P. on or about November 9, 2005, Samuel A. Ramirez & Company, Inc. on or about November 9, 2005, Banc of America Securities, LLC on or about November 10, 2005, CMG Institutional Trading L.L.C. on or about November 10, 2005, William Blair & Company, L.L.C. on or about November 10, 2005, Muriel Siebert & Co., Inc. on or about November 10, 2005, Sandler O’Neill & Partners, L.P. on or about November 14, 2005, and The Williams Capital Group, L.P. on or about November 15, 2005. As of the date of this notice, the

Underwriter Defendants have not been served with the summons and First Amended Petition filed by Plaintiff on November 25, 2005.

10. The Underwriter Defendants have timely filed this notice of removal within 30 days of service in accordance with 28 U.S.C. § 1446(b) and Fed. R. Bankr. 9027(a)(3).

11. The Underwriter Defendants, in accordance with the terms of 28 U.S.C. § 1446(d) and Fed. R. Bankr. 9027(b), will promptly serve a copy of this Notice on counsel for Plaintiffs and will file a copy of this Notice with the Clerk of the Supreme Court of the State of New York, County of New York.

12. A true and correct copy of the Certificate of Service for this Notice of Removal is attached hereto as Exhibit C.

Related Case

13. The instant action is related to 22 actions currently pending in the United States District Court for the Southern District of New York. These actions include: Mazur et al v. Refco, Inc. et. al. (05 Civ. 8626); Frontpoint Financial v. Refco, Inc. et. al. (05 Civ. 8663); Lieber v. Refco, Inc., et al. (05 Civ. 8667); Weiss v. Refco, Inc. et. al. (05 Civ. 8691); Glaubach v. Refco, Inc. et. al. (05 Civ. 8692); Gross v. Refco, Inc., et al. (05 Civ. 8697); Fine v. Bennett, et al. (05 Civ. 8701); Salamone et al. v. Refco, Inc., et al. (05 Civ. 8716); RD Partners LLC v. Refco, Inc. et. al. (05 Civ. 8737); Wakefield et al. v. Refco, Inc., et al. (05 Civ. 8742); Varun Mehta v. Refco, Inc., et al. (05 Civ. 8748); Gaugler v. Refco, Inc., et al. (05 Civ. 8886); Baker v. Refco, Inc., et al. (05 Civ. 8923); Nathanson v. Refco, Inc., et al. (05 Civ. 8926); Becker v. Refco, Inc., et al. (05 Civ. 8929); American Financial International Group v. Refco, Inc., et al. (05 Civ. 8988); Mettupatti v. Refco, Inc., et al. (05 Civ. 9048); Weiss v. Refco, Inc., et al. (05 Civ. 9126); Carmona v. Paulson et al. (05 Civ. 9327); Thomas H. Lee Equity Fund V., L.P. et al

v. Bennett et al. (05 Civ. 9608); Weit v. Refco, Inc., et al. (05 Civ. 9611); Esses v. Refco, Inc., et al. (05 Civ. 9654).

14. The first filed action is Mazur et al v. Refco, Inc. et. al. (05 Civ. 8626) (Lynch, J.);

WHEREFORE, the Underwriter Defendants respectfully request that this Court accept this Notice of Removal and grant them such other and further relief as the Court deems fair and proper.

DATED: New York, New York
November 29, 2005

WILMER CUTLER PICKERING HALE AND DORR LLP

By:



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